

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>Appl. No.</b>	: 10/591,930	<b>Confirmation No.</b>	4599
<b>Applicant (s)</b>	: Michael Vernon Spencer	<b>TC/A.U.</b>	: 1654
<b>Filed</b>	: September 7, 2006	<b>Examiner</b>	: R.T Niebauer
<b>Title</b>	: Production of Low Molecular Weight Ethylcellulose		
<b>Docket No.</b>	: 63669A		
<b>Customer No.</b>	: 00109		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

### RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

This is responsive to the Notice of Non-Compliant Appeal Brief dated April 10, 2009.

**Remarks/Arguments** begin on page 2 of this paper.

To the extent necessary to preserve pendency, the Director is respectfully requested to extend the period for filing a reply in the above identified application. The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 041512.

## REMARKS

Applicants respectfully submit that the Notice of Non-Compliant Appeal Brief was improper and not in accordance with the Office's stated policy. The Federal Register, Vol. 73, No. 225 (Thursday, November 20, 2008), regarding 37 CFR Part 41, entitled "Clarification of the Effective Date Provision in the Final Rule for Ex Parte Appeals," states that:

On June 10, 2008, the United States Patent and Trademark Office (Office) published the final rule that amends the rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte patent appeals. The effective date provision in the final rule states that the effective date is December 10, 2008, and the final rule shall apply to all appeals in which an appeal brief is filed on or after the effective date. The final rule requires, in part, appeal briefs in a new format relative to the format required prior to the rule revision. **The Office is issuing this notice to clarify that it will not hold an appeal brief as non-compliant solely for following the new format even though it is filed before the effective date.**

Accordingly, the Examiner improperly issued the Notice of Non-Compliant Appeal Brief.

There can be no mistake in the Office's avowed policy - on Dec. 10, 2008, the Office delayed implementation of the final rule relating to practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte appeals, *but reiterated* **"In the interim, the USPTO will continue to accept appeal briefs in either the current format, or the new format as outlined in the final rule."** [www.uspto.gov/main/homepagenews/2008dec10.htm](http://www.uspto.gov/main/homepagenews/2008dec10.htm).

Applicants respectfully submit that the Notice of Non-Compliant Appeal Brief should be withdrawn.

Respectfully submitted,

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